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ARTICLE

An Outstanding Claim: The Ryukyu/Okinawa Peoples' Right to Self-Determination under International Human Rights Law

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Abstract

This paper aims to examine the legitimacy of Ryukyuans/Okinawans'[1] right to self-determination (RSD) under international human rights law. To this end, it first details the evolution of the RSD from the traditional right to independence for colonial peoples, to the continuing right to self-governance for wider groups of peoples, which is followed by an analysis of holders of the RSD. The paper then turns to Ryukyu/Okinawa to discuss the RSD of its peoples. Three historical events, the Disposition of Ryukyu, the Treaty of San Francisco, and the reversion of Okinawa to Japan, are analysed from a legal perspective, followed by an examination of the peoplehood of Ryukyuans/Okinawans. These lead to the conclusion that the Ryukyuans/Okinawans may legitimately claim that they possess the "unexercised" RSD as a quasi-non-self-governing people, and that they are entitled to claim the RSD as a "people" under the International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, and other United Nations declarations.

Keywords: Human Rights; History and Theory of International Law

On 21 September 2015, Takeshi Onaga, the then governor of Okinawa, delivered a historic oral statement at the United Nations Human Rights Council. This two-minute oral statement received tremendous public attention in Japan for two reasons. First, it was the first time that the governor of a local municipality of Japan appeared at the United Nations (UN) Human Rights Council to openly criticize the Government of Japan. Second, and more essentially, he stated that, "[Okinawans'] right to self-determination and human rights have been neglected".[2]

[1] Please note that Ryukyu is also spelled as Ryūkyū or Lew Chew. This paper uses the "Ryukyu" spelling, which is more widely used in academic writings and reports of civil society organizations and of UN human rights bodies. Also, drawing from the existence of linguistic minorities with diverse historical backgrounds within Ryukyu/Okinawa, "peoples", a plural form of people, is used in addressing the Ryukyuans/Okinawans. Civil society organizations such as the Association of Comprehensive Studies for Independence of the Lew Chewans (ACSILs) and Association of the Indigenous Peoples in the Ryukyus (AIPR) also use a plural form. Therefore, this paper also uses a plural form; however, please note that when claiming the right Ryukyuans/Okinawans have done so collectively as one group, in contrast to the *Yamatonchu* or mainland Japanese.

[2] ONAGA Takeshi, "Oral Statement at the United Nations Human Rights Council by the Governor of Okinawa" (21 September 2015), online: Okinawa Prefecture <http://www.pref.okinawa.lg.jp/site/chijiko/henoko/documents/unoralstatement.pdf>.

If the governor of any other prefecture in Japan claimed the right to self-determination (RSD), it would not have had the same impact because no legal basis to claim such rights seems to exist for other prefectural governors. However, considering the historical background, the ongoing friction between Ryukyu/Okinawa and Japan, and the alleged structural discrimination, Onaga's use of the term "right to self-determination" seemed to have legitimacy in the eyes of the public. His speech shook the Government of Japan to the point that it stressed its efforts to mitigate the impact of US forces and promote economic development, but they remained silent on the human rights claim in its right of reply.[3] However, only a limited number of studies have been conducted on these issues.

In this respect, the purpose of this paper is to examine whether the claim of Ryukyuans/Okinawans' RSD, as expressed by Onaga, has legitimacy under international human rights law. For this purpose, this paper first discusses the evolution of the RSD and illustrates the incorporation of the internal dimension in the RSD. This will be followed by an analysis of the subject of RSD in modern international human rights law.

Second, this paper will analyse three historical events from a legal point of view to examine the transition of the international status of Ryukyu/Okinawa and its consequences in terms of the recognition of the RSD of the Ryukyuans/Okinawans. This paper argues that the peoples of Ryukyu/Okinawa possess the RSD collectively as a quasi-non-self-governing people based on United Nations General Assembly (UNGA) Resolution 1514 (XV); the Declaration on Granting Independence to Colonial Countries and Peoples (the Declaration);[4] and that, although their external RSD would be difficult to exercise, their internal RSD as a distinct people must be respected and promoted within the mother state of Japan under the ICCPR[5] and ICESCR[6] (collectively referred to as the Covenants).

I. The Evolution and Current Understanding of Rights to Self-Determination

"Today, the principle of self-determination has been embodied in multiple international treaties and conventions, and has crystallized into a rule of customary international law, binding on all nations."[7] The International Court of Justice (ICJ) has affirmed the RSD as a legal right under international law in its *Advisory Opinion on Namibia*[8] and in the *East Timor Case*.[9] The ICJ has even recognized its *erga omnes* character in the *East Timor Case*.[10] Traditionally, the RSD was invoked by colonial peoples when seeking independence from former colonizing states. However, wider groups of people have claimed RSDs in recent years. The ICJ has recognized the RSD of the people outside the narrow colonial

[3] "Henoko ga Yuiitsu no Kaiketusaku. Seifu ga Chiji ni Hanron" [translated by Ai Abe: "Henoko is the Only Solution. Government Objected Governor"] *Okinawa Times* (23 September 2015), online: Okinawa Times <http://www.okinawatimes.co.jp/articles/-/18994>. See also, "Item: 4 General Debate – 17th Meeting 30th Regular Session of Human Rights Council" *UN Web TV* (21 September 2015), online: UN Web TV <https://media.un.org/en/asset/k10/k106z5ir4c>.

[4] *Declaration on the Granting of Independence to Colonial Countries and Peoples*, GA Res. 1514 (XV), UN Doc. A/RES/1514(XV) (1960) [*The Declaration*].

[5] *International Covenant on Civil and Political Rights*, 19 December 1966, 999 U.N.T.S. 171, 6 ILM 368 (entered into force 23 March 1976) [*ICCPR*].

[6] *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 U.N.T.S. 3, 6 ILM 360 (entered into force 3 January 1976) [*ICESCR*].

[7] Milena STERIO, *The Right to Self-Determination under International Law: "Selfistans", Secession, and the Rule of the Great Powers* (London: Routledge, 2013) at 9.

[8] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, Advisory Opinion, [1970] ICJ Rep. 16 at 31–2.

[9] *Case Concerning East Timor (Portugal v. Australia)*, [1995] ICJ Rep. 90 at 102.

[10] *Ibid*.

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context in its advisory opinion on the *Palestine Wall Case*.[11] In a separate opinion on the unilateral declaration of independence of Kosovo, Judge Cançado Trindade stated that "the principle of self-determination has survived decolonization" and that it "applies in new situation of systemic oppression, subjugation and tyranny", thereby acknowledging that an internal self-determination has inspired peoples suffering from oppression within independent states.[12] Nevertheless, the discussion on the substantive contents of or holders of the RSD is still unsettled. This is because the RSD is a multi-dimensional concept which has several philosophical origins, shaped by changes in the international political situation.

A. Evolution as the Right to De-Colonization

The first multilateral legal instrument which explicitly enshrined the principle of self-determination was the Charter of the United Nations (the Charter). Article 1(2) of the Charter states that one of the organization's purposes is "[t]o develop friendly relations among nations based on the respect for the principle of equal rights and self-determination of peoples".[13] Although the adoption of the Charter "signals the maturing of the political postulate of self-determination into a legal standard of behavior",[14] it has many limitations. It did not define the concept of self-determination, or what it meant by "peoples", or distinguish between various understandings of self-determination. The analysis of the preparatory work of the Charter by Cassese (1995) suggests that self-determination in the Charter did *not* mean any of the following:[15]

(a) the right of a minority or an ethnic or national group to secede from a sovereign country
(b) the right of a colonial people to achieve political independence ...
(c) the right of the people of a sovereign State freely to choose its rulers through regular, democratic, and free elections

Rather, it merely contemplated that the member states should "grant *self-government* as much as possible to the communities over which they exercise their jurisdiction".[16] Similarly, the literal reading of the provision suggests that the term "peoples" did not mean peoples in colonies or other territories who were not members of the United Nations (UN) at that time but referred only to the member states of the UN.[17]

Despite the intentions of the drafters of the Charter, Article 1(2) evolved dramatically as the right of colonial peoples to gain independence. Self-determination, as an anti-colonialism postulate originally conceptualized by Lenin,[18] was rediscovered and adopted by socialist states, and later by newly independent states in Africa and Asia.

[11] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] ICJ Rep. 136 at para. 118.

[12] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, Separate Opinion of Judge Cançado Trindade, [2010] ICJ Rep. 403 at 593.

[13] *Charter of the United Nations*, 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945) [*UN Charter*].

[14] Antonio CASSESE, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995) at 43.

[15] *Ibid*. at 42.

[16] *Ibid*.

[17] Elizabeth RODRÍGUEZ-SANTIAGO, "The Evolution of Self-Determination of Peoples in International Law" in Fernando R. TESÓN, ed., *The Theory of Self-Determination* (Cambridge: Cambridge University Press, 2016), 201 at 218.

[18] V.I. LENIN, "Lenin's Marginal Notes on a Letter from G.V. Chicherin (10 March 1922)" in V.I. LENIN, *On the Foreign Policy of the Soviet State* (Moscow: Progress Publishers, 1968), 421, as cited in Cassese, *supra* note 14 at 15.

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These states upheld self-determination as meaning the liberation of peoples subject to colonialism, racism, and the domination of alien oppressors, and emphasized the external exercise of self-determination.

The increase in the number of newly independent Asian and African states changed the composition of the UNGA, and they began steering the debate at the UNGA through a series of resolutions. In 1952, the UNGA adopted resolution 637 (VII)[19] which recognized "the right of self-determination for these territories for the first time"[20] and demanded that member states promote realization of the right.

In 1955, representatives from twenty-nine countries – twenty-three from Asia and six from Africa – attended a conference held in Bandung, Indonesia. Although the leaders who came to Bandung were from a divided background,[21] they were united in their opposition to racism and colonialism and condemned "colonialism in all its manifestation [a]s an evil which should speedily be brought to an end".[22] They also linked the principle of self-determination of peoples and nations with the struggle against racial discrimination and colonialism, or "alien subjugation, domination and exploitation".[23] This declaration advanced the self-determination of peoples as set forth in the Charter of the United Nations within the context of decolonization, and expressed the strong commitment of Asian and African states to decolonization and anti-racism.

The popularity of this, which Senaratne calls the "Third World understanding of the right to self-determination", was confirmed by the adoption of the Declaration in 1960.[24] The Declaration and Resolution 1541 (XV), which was adopted the very next day,[25] are milestones in terms of the RSD's evolution into a legal right and the codification of the principles to implement the right. The Declaration asserted that the "subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights"[26] and all peoples have the RSD. Resolution 1541 (XV) "codified the principles to implement the exercise of the right to self-determination for non-self-governing territories",[27] providing that self-determination could be exercised through independence, free integration, or association.

However, in the process of debating the Declaration and Resolution 1541 (XV), a narrow definition of non-self-governing peoples was adopted. As a result, and as pointed out by Senaratne, "the demand made by smaller ethnic and linguistic groups within the newly independent postcolonial states, for greater autonomy and self-determination"[28] was neglected.

[19] *The Right of Peoples and Nations to Self-Determination*, GA Res. 637 (VII), UN Doc. A/RES/637 (1952).

[20] Rodríguez-Santiago, *supra* note 17 at 222.

[21] Dipesh CHAKRABARTY, "The Legacies of Bandung: Decolonization and the Politics of Culture" in Christopher J. LEE, ed., *Making a World after Empire: The Bandung Moment and its Political Afterlives* (Athens, Ohio: Ohio University Press, 2010), 45 at 48–9.

[22] The Ministry of Foreign Affairs, Republic of Indonesia, "Final Communiqué of the Asian-African Conference of Bandung (24 April 1955)", Asia-Africa Speak from Bandung, Jakarta (24 April 1955), online: CVCE <https://www.cvce.eu/content/publication/1997/10/13/676237bd-72f7-471f-949a-88b6ae513585/publishable_en.pdf> at 5.

[23] *Ibid*.

[24] Kalana SENARATNE, *Internal Self-Determination in International Law: History, Theory, and Practice* (Cambridge: Cambridge University Press, 2021) at 36.

[25] *Principle Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter*, GA Res. 1541 (XV), UN Doc. A/RES/1541(XV) (1960) [*Resolution 1541 (XV)*].

[26] *The Declaration*, *supra* note 4.

[27] Jean SALMON, "Internal Aspect of the Right to Self-Determination: Towards a Democratic Legitimacy Principle?" in Christian TOMUSCHAT, ed., *Modern Law of Self-Determination* (Dordrecht/Boston/London: Martinus Nijhoff, 1993), 253 at 255.

[28] Senaratne, *supra* note 24 at 37.

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The "Blue Water Principle" contributed to this restrictive interpretation. During the discussion of the Declaration and Resolution 1541 (XV), some states, such as Belgium, attempted to expand the definition of non-self-governing peoples broadly to include indigenous peoples and minorities.[29] Belgium, which had to give up its own colony in the Congo, criticized the member states which had non-self-governing peoples within their borders, arguing that "colonialism would simply be continued in another form, with the indigenous peoples involved arbitrarily subordinated to a centralized authority".[30] Responding to this "Belgium thesis", Congolese independence leaders such as Patrice Lumumba proposed another principle: only territories that were separated by at least thirty miles of open sea from its colonizers were recognized as colonies. Thus, only peoples in such territories were entitled to exercise the RSD,[31] which became known as the Blue Water Principle.

The Blue Water Principle equated non-self-governing peoples to "colonial peoples", then defined people based on colonial territorial boundaries. Many of the African or Asian states at the debate were themselves newly liberated former colonies and, as Neuberger (1986) points out, in Africa, almost all claims of self-determination were based on colonial territorial units which had a certain ethno-cultural core which contained many ethno-cultural groups or peoples.[32] The Belgium thesis would require those states to recognize the "extreme ethnic heterogeneity"[33] and existence of ethnic minorities within their borders, thus threatening the sense of statehood and national unity[34] as well as the legitimacy of their independence claim. For those states, defining "people" as a whole people within former colonial boundaries would serve the goal of independence better. For Western powers and socialist states that had indigenous populations or internally conquered territories, the Blue Water Principle was preferable because it "served to consecrate the existing disposition of their 'internal' territoriality, irrespective of how it may have been obtained",[35] and would secure the "privileged status of the state system".[36] Consequently, Resolution 1541 (XV) defined the non-self-governing territory as "a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it".[37] In other words, it succeeded in narrowing down the application of the RSD only to a people in territories where "political encroachment involved 'organized colonization' by European powers of peoples on *distant* continents",[38] resulting in the complete settlement of the RSD in the narrow de-colonization context and the exclusion of a huge number of peoples. Non-exhaustive lists of those excluded peoples were indigenous peoples both in postcolonial Asian and African states, like India, and in settler nations such as those in the North and South Americas, Australia, and New Zealand, as well as peoples in "other 'older' established states like Japan".[39]

[29] Patrick THORNBERRY, *International Law and the Rights of Minorities* (Oxford: Clarendon Press, 1991) at 17.

[30] Ward CHURCHILL, *Acts of Rebellion: The Ward Churchill Reader* (New York: Routledge, 2003) at 18.

[31] *Ibid*.

[32] Ralph Benyamin NEUBERGER, *National Self-Determination in Postcolonial Africa* (Boulder, Colorado: Lynne Rienner Publishers, 1986) at 52–3.

[33] Hurst HANNUM, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia, Pennsylvania: University of Pennsylvania Press, 1990) at 45–7.

[34] *Ibid*.

[35] Churchill, *supra note* 30 at 18.

[36] *Ibid*.

[37] *Principle Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter*, *supra* note 25 at Principle IV.

[38] Kelly DIETZ, "Demilitarizing Sovereignty: Self-Determination and Anti-Military Base Activism in Okinawa, Japan" in Philip MCMICHAEL, ed., *Contesting Development: Critical Struggles for Social Change* (New York: Routledge, 2010), 182 at 187.

[39] *Ibid*.

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B. Incorporation of Internal Self-Determination and a Broad Application

This narrow understanding of self-determination has undergone further changes in response to geopolitical changes such as the end of the decolonization process and the dissolution of European countries such as former Yugoslavia.[40] These changes can be characterized as the incorporation of the internal dimension of self-determination and a broader interpretation of the RSD.

Article 1 of both the ICCPR and ICESCR are milestones. The inclusion of this article was inspired by the maturing decolonization process and the widely shared understanding that "self-determination was the prerequisite for human rights",[41] as enunciated in the Covenants. Article 1 states:[42]

> (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.
> (2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
> (3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Articles 1(1) and 1(2) list the rights that "all peoples" have by virtue of the RSD: (i) the right to freely determine their political status; (ii) the right to pursue their economic, social, and cultural development; and (iii) the right to freely dispose of their natural wealth and not to be deprived of their own means of subsistence. Cassese argued that the first right established a permanent link between self-determination and civil political rights, encompassing the internal democratic decision-making process. It transforms the RSD into "a *continuing right*";[43] that is, a right that does not expire upon independence, which state parties are continuously obliged to respect.

Crawford argued that the third right can be regarded as including the right to existence and the principle of permanent sovereignty of natural resources, and that it clearly indicates the broader application of the RSD[44] encompassing the internal exercise within their mother states.

Article 1(3) places a duty on the state parties, explicitly differentiating the state parties which have responsibility for non-self-governing peoples and Trust Territories from those which do not, implying that the latter also have a duty to promote the realization of the RSD. While the right to independence may be limited to traditional colonized peoples, the Covenants acknowledge that the RSD exists outside the colonial context and that it encompasses "a form of internal governance"[45] within their mother states.

[40] Sterio, *supra* note 7 at 15.

[41] James SUMMERS, "The Rights of Peoples to Self-Determination in Article 1 of the Human Rights Covenants as a Claimable Right" (2019) 31(2) New England Journal of Public Policy 1 at 2, online: ScholarWorks <https://scholarworks.umb.edu/nejpp/vol31/iss2/5>.

[42] ICCPR, *supra* note 5. See also ICESCR, *supra* note 6.

[43] Cassese, *supra* note 14 at 54.

[44] James CRAWFORD, "The Rights of Peoples: Some Conclusions" in James CRAWFORD, ed., *The Rights of Peoples* (Oxford: Clarendon Press, 1988), 159 at 169.

[45] Sterio, *supra* note 7 at 11.

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The UNGA Resolution 2625 (the Friendly Relations Declaration), adopted in 1970, is often referred to with regard to the RSD as "embodying principles of general international law".[46] With its adoption, it was accepted that "the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination", together with the establishment of a free association or integration with an independent state.[47] While Salmon took the view that the Friendly Relations Declaration focuses on the external aspect of the RSD,[48] Senaratne argues that, drawing from prior debates, although not explicit, the Friendly Relations Declaration recognized the internal dimension of the RSD.[49] Sterio also argues that it was acknowledged that "a people could exercise its right to self-determination through a form of political or territorial autonomy, special groups rights... and so forth"[50] within states.

Five years later, the formulation of the internal dimension of the RSD was explicitly acknowledged in the Helsinki Act, which famously proclaimed that "all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status",[51] indicating that the RSD is a continuing right which does not end with the realization of independence, and enables "peoples to choose a government through democratic means".[52] The Declaration on the Rights of Indigenous Peoples (UNDRIP) went further, explicitly proclaiming under Article 4 that "[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government".[53]

In short, the RSD incorporated the internal dimension and recognized the establishment of autonomy or other forms of regional political self-governance as a way of implementing the right.

C. Holders of the RSD

The incorporation of the internal dimension of self-determination and a broader interpretation of the RSD inevitably results in changes to determining subjects who may claim the RSD. As argued by the Supreme Court of Canada in *Reference re Secession of Quebec Case,* with the RSD being effectuated without the need for independence or secession, conferring it on people living within or across sovereign states would not interfere with the territorial integrity or the principle of *uti possidetis*.[54] How has international law then defined the subject of the RSD? Two groups have been considered as the subject of the RSD, namely peoples and indigenous peoples.

1. Peoples

Traditionally, the term "peoples" was understood to mean: (1) entire populations living in independent and sovereign states; (2) entire populations of territories that have yet to attain independence; or (3) populations living under foreign military occupation.[55]

[46] Gaetano PENTASSUGLIA, "State Sovereignty, Minorities and Self-Determination: A Comprehensive Legal View [Article]" (2002) 9(4) International Journal on Minority and Group Rights 303 at 305.

[47] *Declaration on Principles of International Law Concerning Friendly Relations and Co-Operations among States in Accordance with the Charter of the United Nations*, GA Res. 2625 (XXV), UN Doc. A/RES/25/2625 (1970).

[48] Salmon, *supra* note 27 at 257.

[49] Senaratne, *supra* note 24 at 39.

[50] Sterio, *supra* note 7 at 15.

[51] Organization for Security and Co-operation in Europe (OSCE), "Conference on Security and Co-operation in Europe Final Act: Helsinki 1975" (1975), online: OSCE <https://www.osce.org/files/f/documents/5/c/39501.pdf> at 7 [*1975 Helsinki Final Act*].

[52] Senaratne, *supra* note 24 at 41.

[53] *United Nations Declaration on the Rights of Indigenous Peoples*, Resolution Adopted by the General Assembly on 13 September 2007, GA Res. 61/295, UN Doc. A/RES/61/295 (2007).

[54] *Reference re Secession of Quebec* [1998] 2 S.C.R. 217, Judgment of the Supreme Court of Canada at para. 130.

[55] Cassese, *supra* note 14 at 59.

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The first and second understandings of the "entire population" have had strong support among states. For example, in a written statement regarding Kosovo's unilateral declaration of independence, Cyprus argued that the internal self-determination recognized in Article 1 of the Covenants was applicable to a population – meaning all people living in a state – but not to minority groups.[56] The Russian Federation argued that while "a population of a trust or mandated territory, of a non-self-governing territory, or of an existing State, *taken as a whole,* undisputedly qualifies as a people entitled to self-determination", "[w]hether... an ethnic or other group within an existing State may qualify as a people, is subject to extensive debates".[57]

However, the literal reading of the common Article 1 of the Covenants suggests that it adopts a broader meaning. Article 1(3) refers to states which have "Non-Self-Governing and Trust Territories" separately from those which do not, indicating that the RSD enunciated here is *not* limited to the peoples in such territories. Crawford argues that the notion of peoples is "context-dependent" and that as far as the rights enunciated in Article 1(2) are concerned, the Covenants adopt a broader meaning of the term.[58] Cassese also suggests that the term "peoples" is not limited to colonial peoples but includes peoples living in sovereign states as far as internal self-determination is concerned.[59] The ICJ has also recognized the RSD of peoples outside the narrow colonial context in its advisory opinion in the *Palestine Wall Case*.[60] The Supreme Court of Canada provided that people could be a "portion of the population of an existing state" in the *Quebec case*.[61]

Although neither the Covenants nor other international legal instruments provide a clear definition for "peoples", the United Nations Educational, Scientific and Cultural Organization (UNESCO) provides its indicative descriptions as follows:[62]

(a) a common historical tradition;
(b) racial or ethnic identity;
(c) cultural homogeneity;
(d) linguistic unity;
(e) religious or ideological affinity;
(f) territorial connection; and
(g) a common economic life.

Summarizing these characteristics, Scharf suggests a two-part test to examine whether a group is qualified as a people. First, an objective test examines to what extent "its members share a common racial background, ethnicity, language, religion, history and cultural heritage" and the "territorial integrity of the area the groups is claiming".[63] The second test is on the subjective dimension to examine the "extent to which individuals within the group self-consciously perceive themselves collectively as a distinct people" and "the

[56] Republic of Cyprus, "Written Statement Submitted by the Republic of Cyprus" (17 April 2009), online: ICJ <https://www.icj-cij.org/public/files/case-related/141/15609.pdf> at paras. 129–39.

[57] Russian Federation, "Written Statement by the Russian Federation" (16 April 2009), online: ICJ <https://www.icj-cij.org/public/files/case-related/141/15628.pdf> at para. 81.

[58] Crawford, *supra* note 44 at 169.

[59] Cassese, *supra* note 14 at 59–61.

[60] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *supra* note 11 at para. 122.

[61] *Reference re Secession of Quebec*, *supra* note 54 at para. 124.

[62] *International Meeting of Experts on Further Study of the Concept of the Rights of Peoples: Final Report and Recommendations*, UNESCO Paris, 27–30 November 1989, UN Doc. SHS-89/CONF.602/7 (1990) at 7–8.

[63] Michael P. SCHARF, "Earned Sovereignty: Juridical Underpinnings" (2002) 31(3) Denver Journal of International Law and Policy 373 at 380.

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degree to which the group can form a viable political entity".[64] Brownlie similarly defined "people" as a community which has a distinctive character, and suggested distinctiveness depending on criteria such as "culture, language religion and group psychology".[65]

Though the definition of people will remain an issue to be discussed since there is "no terminological precision as to what constitutes a 'people' in international law",[66] the experience of "common suffering",[67] a new element added by Judge Cançado Trindade, can be a practical and significant criterion.[68]

2. *Indigenous peoples*

As far as the internal dimension of self-determination is concerned, indigenous peoples seem to have the most compelling case as subjects of RSD. The Human Rights Committee (CCPR) commented on the protection of indigenous peoples, referring to Article 1 of the ICCPR in its concluding observation of Canada in 1999.[69] Since then, it has referred to indigenous peoples' RSD under Article 1 several times in its concluding observations regarding nations such as Norway,[70] Mexico,[71] and Australia,[72] implying that it has recognized indigenous peoples as subjects of the RSD. Moreover, the mobilization of indigenous peoples over more than three decades resulted in the adoption of the UNDRIP in 2007, with 144 states in favour and only 4 opposing. It recognized indigenous peoples as distinctive peoples and their collective right to self-determination in Article 3. Although the UNDRIP is not legally binding, it represents an "authoritative synthesis of human rights principles found in various treaties"[73] and the pervasive support among states represents *opinio juris*. Thus, UNDRIP can be seen as an expression of the general principles of international law to some extent.[74]

It must be stressed that the core of the RSD is to recognize that the "subjection of people to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights".[75] Limiting the subjects of an *external* dimension of self-determination to only colonial peoples based on colonial boundaries may be legitimized in the name of territorial integrity and international stability. However, when the internal dimension of self-determination is concerned, limiting its subject solely to a traditional understanding of colonial people does not have sufficient moral justification. Rather, the reasoning for

[64] *Ibid*.

[65] Ian BROWNLIE, "The Rights of Peoples in Modern International Law" in James CRAWFORD, ed., *The Rights of Peoples* (Oxford: Clarendon Press, 1988), 1 at 5.

[66] Separate Opinion of Judge Cançado Trindade, *supra* note 12 at para. 228.

[67] *Ibid*. at para. 229.

[68] Senaratne, *supra* note 24 at 217.

[69] *Concluding Observations of the Human Rights Committee: Canada*, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add.105 (1999) at para. 8.

[70] *Concluding Observations of the Human Rights Committee: Norway*, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add.112 (1999) at para. 17.

[71] *Concluding Observations of the Human Rights Committee: Mexico*, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, UN Doc. CCPR/C/79/Add.109 (1999) at para. 19.

[72] *Report of the Human Rights Committee Volume I*, General Assembly Official Records Fifty-fifth Session Supplement No. 40, UN Doc. A/55/40 (Vol. I) (2000) at para. 506.

[73] S. James ANAYA and Robert A. WILLIAMS, "Study on the International Law and Policy Relating to the Situation of the Native Hawaiian People", Indigenous Peoples Law and Policy Program, James E. Rogers College of Law, The University of Arizona, June 2015, online: OHA <https://www.oha.org/wp-content/uploads/OHA-IPLP-Report-FINAL-09-09-15.pdf>.

[74] *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, S. James Anaya*, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, UN Doc. A/HRC/9/9 (2008) at para 41.

[75] *The Declaration, supra* note 4.

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recognizing the RSD for colonial peoples should lend support to the claim of the RSD by peoples in "position or status of subordination",[76] regardless of their territorial placement and international status.

II. Ryukyu/Okinawa

The paper now turns to the specific case of Ryukyu/Okinawa and discusses whether its peoples have the legitimacy to claim the RSD.

A. RSD as a Non-Self-Governing People

Although Okinawa/Ryukyu was never formally listed as a non-self-governing territory, it possesses many similarities with enlisted territories. Thus, this paper first discusses whether the peoples of Ryukyu/Okinawa were and are eligible for the RSD as a non-self-governing people. For this purpose, three historical events, namely the Disposition of Ryukyu, the Treaty of San Francisco, and the reversion of Okinawa to Japan, will be examined from a legal perspective.

1. Legal examination of the disposition of Ryukyu, "Ryukyu Shobun"

Ryukyu was first unified by Shō Hashi in 1470, and its monarchical regime continued until the mid-seventeenth century. Ryukyu was a part of the "China-centred regional world system"[77] and flourished as a maritime trading kingdom based on a tribunal relationship with China. This stable tribunal system was shaken when the Satsuma *han* (clan) of Japan extended its control over the islands in 1609. After that, Ryukyu fell under the control of both China and Japan, and was placed under a *ryozoku kankei* (dual relationship).[78] Although both Japan and China influenced Ryukyu, it was recognized as an independent kingdom internationally. This can be observed by the conclusion of the Treaty of Amity between the Ryukyu Kingdom and the United States, France, and the Netherlands in the 1850s. In the face of Western imperial expansion, Japan underwent the Meiji Restoration and established the modern nation of the Empire of Japan in 1868. To assert its territorial boundaries, Japan did not accept the dual relationship of Ryukyu, but merged it into the Japanese empire. Since the Government of Japan needed to do this in accordance with the principles of modern international law as a modern nation, the Government argued that Japan had been *effectively ruling* Ryukyu as its "subject state"; thus, it possessed territorial authority over the Ryukyu Islands.[79] To support this argument, the Government of Japan had taken the consistent position that the treatment of Ryukyu was a *domestic* matter of Japan.

The first step was the unilateral proclamation granting a tribunal relation to Ryukyu and the rank of *Ryukyu Han O* (King of the Ryukyu clan) to King Shō Tai in 1872.[80] This alleged tribunal relation provided Japan with the legitimacy to treat Ryukyu as a *zokkoku* (a subject state). Based on this alleged tribunal relation, Japan issued the "Order of rupturing Ryukyu-Sino relations" and the "Order on requisition of jurisdiction", aiming to deprive the diplomatic, judicial, and some police powers of the Ryukyu monarchical

[76] *Principle Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter, supra* note 25.

[77] TOSHIAKI Furuki, "Considering Okinawa as a Frontier" in Glen D. HOOK and Richard SIDDLE, eds., *Japan and Okinawa: Structure and Subjectivity* (London; New York: Routledge Curzon, 2003), 21 at 25.

[78] *Ibid*.

[79] Hideaki UEMURA, "The Colonial Annexation of Okinawa and the Logic of International Law: The Formation of an 'Indigenous People' in East Asia" (2003) 23(2) Japanese Studies 114.

[80] *Ibid*. at 113.

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government.[81] Ryukyu's treaty-making rights as a subject of international law were further abrogated by the *Dajokan* Proclamation: a domestic order under the authority of the Foreign Ministry.[82] It declared that the Government of Japan would *inherit*[83] and exercise jurisdiction over the treaties Ryukyu had concluded with Western powers.[84] The Government of Japan argued that Ryukyu was within "Japanese territory" based on its history of subordination;[85] territorial continuity; racial, linguistic, and cultural commonality; and history of control and protection.[86] Ryukyu officials resisted this reasoning and argued that Ryukyu had dual relations with China and Japan; thus, the unilateral incorporation of Ryukyu within Japanese territory based on racial, linguistic similarity, or territorial continuity would be troublesome.[87]

Having met strong and repeated resistance by the peoples of Ryukyu, the Government of Japan finally sent Matsuda Michiyuki, a "Disposition Officer", on 27 March 1879 to penalize Ryukyu for its disobedience to the Emperor and his orders, and to complete the *Ryukyu Shobun* (Disposition of Ryukyu). Matsuda delivered the orders to Prince Nakijin Chōfu and "*compelled him to agree*"[88] at Shuri Castle, which was surrounded by 160 armed police officers and 400 armed soldiers.[89] When King Shō Tai left Shuri Castle surrounded by the grieving crowds the following day,[90] the *Haihan Chiken* (abolition of clan and establishment of prefecture) of Ryukyu was completed. For the Government of Japan, it meant the successful "internalization" of Ryukyu and incorporation into Japan as the Okinawa Prefecture. On the other hand, it also meant the irreversible loss of sovereignty and the end of the Ryukyu kingdom for its peoples.[91]

It can be observed that Ryukyu had been recognized as the subject of international law until Japan deprived it of its diplomatic rights in 1872. The existence of treaties between the Ryukyu Kingdom and Western powers like the US lends support to this understanding. Although Ryukyu entered dual relations with China and Japan, placing it within a system of "dominant/subordinate relationships",[92] it did not mean that Japan effectively ruled Ryukyu. Uemura argues that the Government of Japan conflated the Asian concepts of "subject state", based on the tribunal relation, with the legal concept of "effective rule" of international law to justify its possession of territorial authority over Ryukyu.[93] In fact, Ryukyu officers sent written petitions to American, French, and Dutch ministers, pleading with them to advise the Japanese Government to cease its interference with Ryukyu sovereignty.[94] Petitions emphasized that "although small in size, Ryukyu constitutes a State" and "Ryukyu enjoys self-governance under the blessing of the Great Qing Dynasty".[95]

[81] Atsushi SHIITADA, "Reconsidering the 'Ryukyu Shobun': Structure of Grounds and Decrees Justifying the 'Ryukyu-han Shobun'" (2011) 8 Okinawa Christian University Review 13 at 19–20.

[82] Uemura, *supra* note 79 at 115.

[83] *Ibid*.

[84] RYUKYUSHIMPOSHA and Tsuyoshi ARAKAKI, eds., *Okinawa No Jiko-Ketteiken: Sono Rekishiteki Konkyo to Kinmirai No Tenbou* [translated by Ai Abe: "The Self-Determination of Okinawa: Its Historic Ground and Future Prospect"] (Tokyo: Koubunken, 2015) at 51.

[85] Uemura, *supra* note 79 at 113.

[86] Kiko NISHIZATO, "The Deprivation of the Sovereignty of the Ryukyu Kingdom in the East Asia History" (2009) 13 Study of Economic History 67 at 90.

[87] *Ibid*.

[88] Uemura, *supra* note 79 at 121.

[89] Ryukyushimposha and Arakaki, *supra* note 84 at 77.

[90] *Ibid*. at 78.

[91] Nishizato, *supra* note 86 at 103.

[92] Uemura, *supra* note 79 at 122.

[93] *Ibid*.

[94] Ryukyushimposha and Arakaki, *supra* note 84 at 72–4.

[95] Nishizato, *supra* note 86 at 98.

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Similar petitions were repeatedly sent to China. These petitions suggest that the peoples of Ryukyu did not regard themselves as Japanese, and that that Japan did not hold "effective rule" over Ryukyu.

Considering the fact that Ryukyu had been a self-governed kingdom that was recognized as the subject of international law, Japan's "Disposition Orders" did not provide sufficient international legitimacy for the Japanese territorial authority over Ryukyu. Thus, the incorporation of Ryukyu should be recognized as an annexation under international law rather than carried out via "domestic procedure" – as insisted by the Japanese Government. Furthermore, the acts of surrounding the castle with armed forces and threatening King Shō Tai amounted to annexation under threat to Ryukyu's Head of State.

Here, a question arises: was the annexation of Ryukyu illegal under international law of that time? Uemura argues that the annexation of Ryukyu was a violation of customary international law of that time; any legal effect of "[t]he expression of a state's consent" is denied if "procured by the coercion of its representative through acts or threats directed against him",[96] which is now stipulated under Article 51 of the Vienna Convention on the Law of Treaties. On the validity of Korea's annexation by Imperial Japan, which was similar to the Ryukyu annexation, Kim adduces the view of a French scholar that the Second Korea-Japan Agreement of 1905, one of the treaties endorsing Korean annexation, was "*null and void*".[97]

However, Crawford argues that the Korean annexation by Japan in 1905 was "undoubtedly effective in international law".[98] This contradicting argument arises from the primitiveness of the international law of that period.[99] As Brownlie points out, during the nineteenth century, "the right of states to go to war and to obtain territory by right of conquests was unlimited".[100] Thus, it is difficult to judge whether the Japanese annexation of Ryukyu, while threatening its representative, was illegal under customary international law of that time.

Rather, a more important perspective can be found in the Joint Resolution to Acknowledge the 100th Anniversary of 17 January 1893 Overthrow of the Kingdom of Hawaii. Under this resolution, the US Congress acknowledged that "the participation of agents and citizens of the United States" in the overthrowing was "illegal"[101] and "in violation of treaties between the two nations and of international law",[102] thereby apologizing the deprivation of inherent sovereignty and RSD of the Native Hawaiian people.[103] This Resolution adopted the approach of "intertemporal law", which was first theorized by Judge Max Huber in the *Island of Palmas case*,[104] and applied the present views of

[96] *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 U.N.T.S. 331 (entered into force 27 January 1980) [VCLT].

[97] Young-Koo KIM, "The Validity of Some Coerced Treaties in the Early 20th Century: A Reconsideration of the Japanese Annexation of Korea in Legal Perspective" (2002) 33(4) Korea Observer 637 at 647.

[98] James CRAWFORD, *The Creation of States in International Law*, 2nd ed. (Oxford: Oxford University Press, 2006) at 520.

[99] Jon M. Van DYKE, "Reconciliation between Korea and Japan" (2006) 5(1) Chinese Journal of International Law 215 at 217.

[100] Ian BROWNLIE, *International Law and the Use of Force by States* (Oxford: Oxford University Press, 1963) at 20.

[101] United States Congress, "Joint Resolution: To Acknowledge the 100th Anniversary of the 17 January 1893 Overthrow of the Kingdom of Hawaii, and to Offer an Apology to Native Hawaiians on Behalf of the United States for the Overthrow of the Kingdom of Hawaii", Public Law 103–50 103rd Congress, S.J. Res 19 (23 November 1993), online: Congress.Gov <https://www.congress.gov/103/statute/STATUTE-107/STATUTE-107-Pg1510.pdf> at 1513.

[102] *Ibid*. at 1511.

[103] *Ibid*. at 1513

[104] Max HUBER and Michiels van VERDUYNEN, "Rendered in Conformity with the Special Agreement Concluded on 23 January 1925 between the United States of America and the Netherlands Relating to the

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international law to historical events in 1893.[105] Were the *Ryukyu Shobun* of 1879 be reviewed in the light of the modern concepts of international law and not of "the law contemporaneous with it",[106] it would lead to the conclusion that the Japanese annexation of Ryukyu was illegal and in violation of international law because international law stipulates that a treaty signed by its representatives under coercion is void[107] and prohibits the acquisition of the territory by force.[108]

In conclusion, the internalization of Ryukyu was completed by "illegal" annexation. This illegal internalization of Ryukyu by Japan runs as an undercurrent of Japan-Ryukyu/Okinawa relations, and provides obstacles for the latter's people to claim the RSD.

2. Legal review of the Treaty of San Francisco

Although the Japanese Government has emphasized its historical ties with Ryukyu/Okinawa to support its claim of the region's "Japanese-ness" and "territorial internality", it also viewed Ryukyuans/Okinawans as different and inferior people "not yet moulded together with the Japanese as one nationality (*ichi kokumin*)".[109] Thus, it promoted "imperialization" of Ryukyuans/Okinawans through education, replacement of island's traditional religion with Shintoism, and prohibition of its culture, language, and customs.[110] As Japan adopted an expansionist policy towards Southeast Asia, it also advanced the militarization of the island as an important strategic site for Japan's national defence.[111] At the end of the Pacific War, Japan designated Ryukyu/Okinawa as a battlefield against the US army in order to delay its infiltration of mainland Japan. During the battle of Okinawa at the end of the Pacific War, the US military began occupying the islands and built military facilities all over them. After its defeat, Japan signed the Treaty of Peace in 1951 in San Francisco (Treaty of San Francisco) and regained its sovereignty. However, under the same treaty, the Ryukyu/Okinawa islands were officially placed under US administration.

After the San Francisco Peace Treaty was signed, the military government of the Ryukyu Islands was replaced with the US Civil Administration of the Ryukyu Islands (USCAR). The governor of USCAR was the Commander-in-Chief of the US Far East Forces, and *de facto* military rule was maintained.[112] The Ryukyu Government, a self-governing body, was established in 1952, but its "Chief Executive of the Executive Branch was to be appointed by the Deputy Governor of USCAR".[113] During the Korean and Vietnamese Wars, the militarization of the Ryukyu/Okinawa islands strengthened due to its strategic and geographical importance.

Taking a closer look at the Treaty of San Francisco, Article 3 of the Treaty states that:[114]

Arbitration of Differences Respecting Sovereignty over the Island of Palmas (or Miangas)" 2 RIAA, 829 (4 April 1928), reprinted in 22(4) American Journal of International Law 867.

[105] Dyke, *supra* note 99 at 225.

[106] *Ibid.* at 226.

[107] VCLT, *supra* note 96 at Article 51.

[108] UN Charter, *supra* note 13.

[109] Mark E. CAPRIO, *Japanese Assimilation Policies in Colonial Korea, 1910–1945* (Seattle; London: University of Washington Press, 2009) at 67.

[110] *Ibid.* at 64–5.

[111] Furuki, *supra* note 77 at 29.

[112] Ryoichi TAOKA, "Legal Status of Okinawa: Present and Future Note" (1958) 2 Japanese Annual of International Law 98 at 100.

[113] *Ibid.*

[114] *Treaty of Peace with Japan*, 8 September 1951, Shuyo-Joyakushu, Japan's Foreign Relations Basic Documents Vol. 1 (entered into force 28 April 1952) at 419–39.

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> Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 north latitude (including the Ryukyu Islands and the Daito Islands) ... Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all or any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

With this Treaty, Japan agreed to recognize the full jurisdiction of the US over the islands and its inhabitants *until* the US placed the islands under the trusteeship system of the UN under Chapter XII of the Charter. However, the US did not place the islands under trusteeship.[115] The international status of Ryukyu/Okinawa as a trusteeship territory under Chapter XII was arbitrarily denied by the US Government.

One possible justification for this inaction may be that although the US exercised its administrative power over the islands, territorial sovereignty of Ryukyu/Okinawa remained with the Government of Japan. While Article 3 recognizes the jurisdiction of the US over Ryukyu/Okinawa, it does not speak of the renunciation of Japanese sovereignty over the islands as it did in connection with Korea, Formosa, the Kuril Islands, and Sakhalin in Article 2. Instead, the US and Japan repeatedly acknowledged that Japan retained "residual sovereignty" over the Okinawa/Ryukyu Islands.[116]

In sum, regardless of the conditions for placing Ryukyu/Okinawa under the trusteeship of the UN stipulated in Article 3 of the Treaty of San Francisco, Ryukyu/Okinawa was arbitrarily left outside the realm of the application of Chapter XII of the Charter, possibly due to the Japanese "residual sovereignty" over the islands. Ryukyu/Okinawa was left under the *de facto* military rule of the United States without any international legal status or constitutional protection.

3. Non-self-governing people or not: a contested view

The US military rule over Ryukyu/Okinawa was severe. People of Ryukyu/Okinawa were not given citizenship by Japan or the United States. This meant that they had no protection in terms of their rights under any constitution, rendering them equivalent to stateless people.[117] Land was forcibly taken by the US military, sometimes at gunpoint, and without proper compensation.[118] Racial discrimination, violence against women, accident-related killings, and impunity were widespread.[119] In a desperate desire for freedom from military rule, Ryukyuans/Okinawans repeatedly requested that the US and Japanese governments provide for the reversion of Ryukyu/Okinawa to Japan. However, their pleas were repeatedly denied by the US Government which considered Ryukyu/Okinawa an important military base which could accommodate nuclear weapons without requiring consultation with other states,[120] and by the Japanese Government which wanted the US army and possibly nuclear weapons to remain in Ryukyu/Okinawa for the benefit of the national security of mainland Japan.[121]

[115] Kiyoshi NAKACHI, "United Nations-Okinawa Relations: From Viewpoints of Human Rights, Indigenous People and Self-Determination" (2015) 16, The Institute of Regional Studies, Okinawa University Regional Studies 179 at 182.

[116] Taoka, *supra* note 112 at 99.

[117] Shōichi KOSEKI and Narahiko TOYOSHITA, *Okinawa Kenpō Naki Sengo: Kōwa Jōyaku Sanjō to Nihon no Anzen Hoshō* [translated by Ai Abe: "Okinawa: Post War without Constitution: Article 3 of the Peace Treaty and Japan's security"] (Tokyo: Misuzu Shobou, 2018) at 123.

[118] *Ibid*. at 116–18.

[119] *Ibid*. at 125.

[120] *Ibid*. at 200.

[121] *Ibid*., at 202.

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However, with the rise of the international decolonization movement, the issue of Ryukyu/Okinawa gained a new perspective. In 1960, the Chairman of the Union of Soviet Socialist Republics, Nikita Khrushchev, made a speech at UNGA on the "Declaration on the Grant of Independence to Colonial Countries and Peoples". In its draft submitted to UNGA,[122] he enlisted Okinawa together with West Irian, Goa, and Puerto Rico as "strong points" retained by the powerful states "[i]n addition to large colonies and Trust Territories", and criticized the possessions of these territories by the superpowers as a "direct survival of the former era of colonial domination".[123] Although Khrushchev removed Ryukyu/Okinawa from his actual speech, his draft indicated that Ryukyu/Okinawa had gained international recognition as a quasi-colonial territory.[124]

Ryukyu/Okinawa was further encouraged by the subsequent adoption of Resolution 1514 (XV). The Government of the Ryukyu Islands adopted the Resolution of Request on the return of Administrative Rights[125] (2.1 Resolution) on 1 February 1962, addressing all UN member states. Referring to Resolution 1514 (XV),it criticized the "administration of Okinawa by the US [a]s incompatible with principle of … self-determination" and strongly requested "all UN member states to pay attention on the unjust rule conducted within Japanese territories against the will of the inhabitants and to take actions to realize the complete and prompt restoration of Japanese sovereignty over Okinawa".[126]

Nevertheless, the Government of Japan had a different view. It had never officially recognized Ryukyu/Okinawa as a colony or a "non-self-governing territory" based on (1) an understanding of Ryukyu/Okinawa's legal status as a territory within the sovereignty of Japan, which was already independent; and (2) the Japanese Government's view that there was no alien exploitation.[127] Consequently, it did not consider its peoples to be entitled to RSD. This view was introduced as:[128]

> Japan possesses residual sovereignty over Okinawa and has requested the U.S. government to return its administrative rights… Okinawa is the territory expected to be returned to Japan later, thus does not fall under the category of 'non-self-governing territory' of Declaration on the Granting of Independence to Colonial Countries and Peoples. Also, although being placed under the U.S. administration, Governments of Japan and the U.S. have taken various policies in collaboration to improve the welfare of the inhabitants, and they are achieving these goals. Having observed this situation, it is not appropriate to consider Okinawa as a territory suffering from exploitation by the U.S. Okinawa cannot be recognized as a territory described in the Declaration. Although Japan voted in favor of this Declaration, it was done with the understanding that Okinawa was not a colony.

[122] *Declaration on the Grant of Independence to Colonial Countries and Peoples*, Submitted by Mr. N.S. Khrushchev, Chairman of the Council of Ministers of the USSR, Chairman of the USSE Delegation, on 23 September 1960 for Consideration by the United Nations General Assembly at its Fifteenth Session, UN Doc. A/4502 (1960).

[123] *Ibid*. at 10.

[124] Koseki and Toyoshita, *supra* note 117 at 228.

[125] Legislature of the Government of the Ryukyu Islands, "Shiseiken Henkan Ni Kansuru Yousei Ketsugi" [translated by Ai Abe "Resolution of Request on Return of Administrative Rights"], Nineteenth Regular Session No. 1 (1 February 1962), online: Okinawa Prefectural Archives <https://www3.archives.pref.okinawa.jp/RDA/ryusei/R00156478B/index.html?page=10>.

[126] *Ibid*.

[127] Koseki and Toyoshita, *supra* note 117 at 239–40.

[128] National Graduate Institute for Policy Studies (GRIPS), "Nihon Seifu Kenkai" [translated by Ai Abe: "Governmental Opinion"] (2 February 1962), online: GRIPS <https://worldjpn.grips.ac.jp/>. See also Koseki and Toyoshita, *supra* note 117 at 239.

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The Government excluded Ryukyu/Okinawa from the scrutiny of the RSD based on its territorial internality and Japanese sovereignty. The internality of Ryukyu/Okinawa, derived from *Ryukyu Shobun* and confirmed by the Treaty of San Francisco, worked against its recognition as a colony or a non-self-governing territory.

However, Resolution 1541 (XV) provides that a non-self-governing territory is defined as "a territory which is geographically separate and is distinct ethnically and/or culturally from the country *administering* it".[129] Ryukyu/Okinawa may not be geographically, ethnically, or culturally far from Japan, which befits its claim of "residual sovereignty", but it is very far from the *administering* state; Resolution 1541 (XV) stipulates that a territory falls into the category of non-self-governing territory when the "administrative, political, judicial, economic or historical relationship between the metropolitan State and the territory concerned" arbitrarily places the territory "in a position or status of subordination".[130] Recalling that Japan transmitted all administrating powers to the US, the "metropolitan State" here is the US. It must also be recalled that Ryukyu/Okinawa was to be placed under UN trusteeship according to Article 3 of the Treaty of San Francisco, but the US *arbitrarily* ignored this condition, placing Ryukyu/Okinawa in a subordinate position and continuing to exercise all powers over its peoples. Based on the discussion thus far, it can be concluded that Ryukyu/Okinawa qualifies as a "non-self-governing territory" under Resolution 1541 (XV); hence, its people are entitled to the RSD as a non-self-governing people based on the Declaration.

4. Legal review of the reversion to Japan

One may argue that even if the peoples of Ryukyu/Okinawa were a non-self-governing people, a decision by the Ryukyuans/Okinawans to revert back to Japan can be regarded as an exercise of their RSD in a form of "[i]ntegration with an independent State" under Principles VIII and IX of Resolution 1541 (XV).[131] This view will lead to the argument that their RSD has already been exercised and has thus expired. However, a close examination of the reversion procedure suggests that the reversion to Japan was not conducted as an exercise of the RSD of Ryukyuans/Okinawans, and they thus still possess the "unexercised" RSD.

If it was a case of an "[i]ntegration with an independent State", as described in Principle VIII and IX, it should have been (a) the "result of the freely expressed wishes of the territory's peoples"[132] and (b) done "on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated".[133]

As discussed earlier, neither the US and Japanese governments treated Ryukyu/Okinawa as a colony or a non-self-governing territory. Consequently, Ryukyuans/Okinawans were not regarded as equally concerned parties. Thus, the reversion of Ryukyu/Okinawa was conducted through negotiations between the Japanese and US governments, and Ryukyuans/Okinawans were never fully consulted. This attitude of the US Government was evident, for example, from the Strategy Paper on Okinawa Negotiations prepared by Elliot L. Richardson, the Chairman of the National Security Council Under Secretaries Committee. In this report, only Kiichi Aichi, the then Minister of Foreign Affairs of Japan, and Eisaku Satō, the then Prime Minister of Japan, were mentioned as

[129] *Principle Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for under Article 73e of the Charter*, *supra* note 25 at Principles IV and V.

[130] *Ibid*.

[131] *Ibid*.

[132] *Ibid*. at Principles VIII and IX.

[133] *Ibid*. at Principle VIII.

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negotiating counterparts, without any Okinawan person present. Similarly, the will and requirements of the US and Japanese governments were described and analysed, while those of the Okinawan people were not mentioned even once.[134]

On the other hand, the attitude of the Government of Japan can be observed by its dismissive treatment of the leader of the then Government of the Ryukyu Islands, who was not even given an opportunity to present its wishes or requests at the specialized parliamentary session on the Okinawan reversion policy. On 17 November 1971, Yara Chōbyō, the first publicly elected Chief Executive of the Government of the Ryukyu Islands, flew to Tokyo to address the Japanese Parliament with the *fukki sochi ni kansuru kengisho* (a proposal document on the reversion procedure) (the Proposal) "as a representative of one million Okinawans who are protagonists in this reversion".[135] The Proposal document laid forth the discontents of Ryukyuans/Okinawans on the Agreement between Japan and the US Concerning the Ryukyu Islands and the Daito Islands (Okinawa Reversion Agreement), the Proposal was of the view that it would only "stabilize the existence of US bases"[136] and "does not fully reflect the will of Okinawans".[137] However, right before his landing at Haneda Airport, the Okinawa Reversion Agreement was approved by the House of Representatives' Special Committee on the Okinawa Reversion Agreement; thus he was not able to present the Proposal to Parliament, leading to the prompt reversion to Japan the next year.

Although reversion was the wish of most Ryukyuans/Okinawans, it was not determined by the Ryukyuans/Okinawans but by the US and Japanese governments. The fact that Yara Chōbyō was not even given a chance to express the Ryukyuans/Okinawans' discontent regarding the Okinawa Reversion Agreement clearly shows the lack of freely expressed wishes of the territory's peoples and the lack of complete equality among the concerned parties. Thus, the reversion to Japan in 1972 clearly failed to qualify as an exercise of the Ryukyuans/Okinawans' RSD as integration with an independent state described in Resolution 1541 (XV). This further implies that the Ryukyuans/Okinawans have not exercised their RSD but, rather, were forced to integrate with an independent state; therefore, their RSD has not expired.

This section argued that although the US and Japanese governments did not recognize this, Ryukyuans/Okinawans can be considered to be a non-self-governing people based on Resolution 1541 (XV). It also argued that they still possess an "unexercised" external RSD. However, considering that it has been fifty years since reversion, it is unlikely that international law supports the view that Ryukyuans/Okinawans can still exercise the RSD as a non-self-governing people as this would threaten the principle of territorial integrity.

B. RSD as a People

This article now seeks to answer the question of whether Ryukyuans/Okinawans can claim an internal RSD as a "people" under Article 1 of the Covenants. For this purpose, this paper will refer to Scharf's two-part test in an amended manner. The two-part test examines both (1) objective dimensions such as common racial background, ethnicity, language, religion, and history and (2) the subjective dimension with self-identification. Since

[134] Washington Secretary of State, "Strategy Paper on Okinawa Negotiations" (3 July 1969), online: Okinawa Prefectural Archives <https://www.archives.pref.okinawa.jp/wp-content/uploads/104-Okinawa-Negotiating-Strategy.pdf>.

[135] Government of the Ryukyu Islands, "Fukki Sochi Ni Kansuru Kengisho" [translated by Ai Abe: "Proposal Document on the Reversion Procedure"] (18 January 1971), online: Okinawa Prefectural Archives <http://www.archives.pref.okinawa.jp/wp-content/uploads/R00001217B-1-1.pdf>.

[136] *Ibid*. at 4.

[137] *Ibid*.

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"race can only be expressed scientifically",[138] and it is already understood that Ryukyuans/Okinawans share a common history, this study focuses on the remaining characteristics when examining the objective dimension. Language will be the key focus of this paper in terms of the objective dimension. This will be read together with the Judge Cançado Trindade's criterion of having experienced "common suffering".[139] On the subjective dimension, Article 1 of the International Labour Organization (ILO) Convention No. 169 is evidence that self-identification is a "fundamental criterion"[140] in determining peoplehood. Thus, special emphasis will be placed on the issue of self-identification of Ryukyuans/Okinawans.

1. Languages

According to Patrick Heinrich, "[t]here are six distinct Japonic languages of the Ryukyu Islands", which "comprise more than 750 local dialects, many of which are not mutually intelligible".[141] Majewicz points out that while Ryukyuan/Okinawan languages are "genetically closely related to Japanese",[142] they fall under the definitions provided by Article 1 of the European Charter for Regional or Minority Language. According to its definition, regional or minority languages are (1) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population and (2) different from the official language(s) of that State.[143] He further argues that recognizing Ryukyuan/Okinawan languages "as [an] ethnolect[s] with the status of [a] separate language[s]" is a persuasive view based on the observation that they have "ethnolinguistic and extralinguistic features distinctive for what stands for the notion of [regional language]" assembled by [European Union] law makers.[144]

UN human rights bodies have been consistent in recognizing Ryukyuan/Okinawan languages as distinctive languages to be protected under international human rights laws. The CCPR recommended taking measures to ensure Ryukyuans/Okinawans' right to educate their children in their own languages under Article 27 of the ICCPR in its 2014 Concluding Observations on Japan.[145] The Committee on the Elimination of Racial Discrimination (CERD) expressed its concern that the Government had not done enough to promote and protect Ryukyu languages and recommended to take protective measures and to "facilitate education of Ryukyu people in their own language"[146] under Article 5 of ICERD.[147]

In Japan, however, they have been considered merely "dialects of Japanese", and this understanding has "contributed to their historical replacement" by the standard Japanese

[138] Brownlie, *supra* note 65 at 5.

[139] Separate Opinion of Judge Cançado Trindade, *supra* note 12 at paras. 228–9.

[140] *Indigenous and Tribal Peoples Convention (No. 169) Concerning Indigenous and Tribal People in Independent Countries*, 27 June 1989, 1650 U.N.T.S. 383 (entered into force 5 September 1991) [ILO Convention No. 169].

[141] Patrick HEINRICH, "*Hōgen Ronsō*: The Great Ryukyuan Languages Debate of 1940" (2013) 25(2) Contemporary Japan 167 at 168.

[142] Alfred F. MAJEWICZ, "Ryukyuan—Linguistic Status, Prestige, Endangerment and Data Availability" (2011) 12 Folia Scandinavica Posnaniensia 155 at 161.

[143] *European Charter for Regional or Minority Languages*, 4 November 1992, European Treaty Series No. 148, Strasbourg, 5.XI.1992 (entered into force 1 March 1998), online: Council of Europe <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680695175>.

[144] Majewicz, *supra* note 142 at 159.

[145] *Concluding Observations on the Sixth Periodic Report of Japan*, UN Human Rights Committee, UN Doc. CCPR/C/JPN/CO/6 (2014) at para. 26.

[146] *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of Japan*, UN Committee on the Elimination of Racial Discrimination, UN Doc. CERD/C/JPN/CO/7-9 (2014) at para. 21.

[147] *International Convention on the Elimination of All Forms of Racial Discrimination*, International Covenant on Civil and Political Rights, 21 December 1965, 660 U.N.T.S. 195 (entered into force 4 January 1969) [*ICERD*].

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language.[148] After the annexation of Ryukyu/Okinawa, the Government of Japan prioritized the education of Ryukyuans/Okinawans in standard Japanese for two reasons, (1) there was a practical inconvenience that Ryukyuans/Okinawans could not understand the language which Japanese officials spoke and (2) there was a need to "*Yamato*nize" (Japanize) their culture and language in order to justify the claim of territorial sovereignty.[149] The Japanese Government established the first language school in 1880 and increased the number of institutions to fifty-seven within five years.[150] Children were offered elementary school education in standard Japanese,[151] and its use was strongly promoted. Kondo suggests that the penalty of the *hogen fuda* (dialect tag), which was to be worn around the neck to stigmatize pupils who spoke the Ryukyuan/Okinawan language,[152] existed until the 1930s.[153] Although they are no longer forbidden, to date, no school teaches the Ryukyuan/Okinawan languages as an official subject; consequently, fewer young people use them. UNESCO has consistently classified Ryukyuan/Okinawan languages as severely or definitely endangered languages in the Atlas of the World's Languages in Danger.[154] However, the Government of Japan has failed to respond to these recommendations[155] and has not taken measures to protect these languages.

2. Assimilation, discrimination, and militarization as "common suffering"

The distinctiveness of Ryukyuan/Okinawan has been the target of the Japanese Government's assimilation policy since its annexation in 1872. Christy argues that there was a gap between "the ideology of ethnic homogeneity" of Ryukyuan/Okinawan and Japanese, which was necessary for Japan's territorial claim, and "the heterogeneity of daily practices".[156] This gap led to assimilation policies, transforming "their speech, dress, work, and leisure activities from those labelled 'Okinawan' to those designated 'Japanese'".[157] Clearly, this policy was shaped by Social Darwinian ideas introduced to Japan during the nineteenth century.[158] It was believed that as "industrial and technological achievements were indices of civilization and enlightenment, then a lack of material development could be regarded as scientific evidence of an inferior status".[159] Ryukyuans/Okinawans were considered to lack industriousness, education, and spirit,[160] and were thus labelled inferior and anti-modern people.[161]

[148] Heinrich, *supra* note 141 at 168.

[149] Kenichirou KONDO, "Gakkou Ga 'Yamatoya' to Yobareta Koro: Ryukyu Shobun Chokugo No Okinawa Ni Okeru Gakkou" ["A Study on the Schools in Okinawa Immediately after the Close of the Ryukyu Court"] (1993) 6 The Annual Reports on Educational Science 105 at 113.

[150] Caprio, *supra* note 109 at 64.

[151] Kondo, *supra* note 149 at 135.

[152] Heinrich, *supra* note 141 at183.

[153] Kenichirou KONDO, "Kindai Okinawa Ni Okeru Hougen Huda No Jittai: Kinjirareta Kotoba" ["The Actual Condition on the Dialect Punishment Board in Modern Okinawa"] (2005) 53 Bulletin of the Faculty of Letters, Aichi Prefectural University 3 at 8.

[154] United Nations Educational, Scientific and Cultural Organization (UNESCO), "Atlas of the World's Languages in Danger", online: UNESCO <http://www.unesco.org/languages-atlas/index.php>.

[155] See for example *Tenth and Eleventh Combined Periodic Report by the Government of Japan under Article 9 of the ICERD*, UN Doc. CERD/C/JPN/10-11 (2017) at para. 30.

[156] Alan S. CHRISTY, "The Making of Imperial Subjects in Okinawa" in Michael WEINER, ed., *Race, Ethnicity and Migration in Modern Japan: Imagined and Imaginary Minorities*, Volume III (London; New York: Routledge Curzon, 2004), 173 at 175.

[157] *Ibid.*

[158] Michael WEINER, "Discourses of Race, Nation and Empire in Pre-1945 Japan" in Michael WEINER, ed., *Race, Ethnicity and Migration in Modern Japan: Imagined and Imaginary Minorities*, Volume I (London; New York: Routledge Curzon, 2004), 217 at 225.

[159] *Ibid.* at 233.

[160] Christy, *supra* note 156 at 178.

[161] *Ibid.*

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This labelling as an inferior people inevitably led to discrimination towards Ryukyuans/Okinawans. One clear example is the *Jinruikan* (Hall of Mankind) incident in 1903. During the Fifth National Industrial Exposition held in Osaka in 1903, living "indigenous or 'exotic' people"[162] were *exhibited* in a move to demonstrate Japan's national strength as a colonial empire.[163] Among the thirty-one people *exhibited*, there were "seven Ainu from Hokkaido... two 'indigenous' people from Taiwan [and] two Okinawans".[164] Ironically, instead of condemning the whole discriminatory exhibition, Ryukyuans/Okinawans expressed their anger, claiming that they were members "of the Japanese race" who deserved to be treated differently from "savages" like the "raw barbarians from Taiwan and Ainu from Hokkaido".[165] As Christy explains, one can observe a strong motivation of Ryukyuans/Okinawans to become "Japanese" due to a fear of falling off the social hierarchy.[166]

Despite this fear and willingness to become Japanese, Ryukyuans/Okinawans have repeatedly been treated differently by the Government. Discrimination is not a story of the past. In 2006, Doudou Diène, the then Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, listed the people of Okinawa as one of the discriminated national minorities in his report.[167] He referred to the concentration of US military bases in Okinawa, and its related aircraft accidents, pollution, and sexual violence, as well as inaction on the part of the Japanese Government and lack of consultation[168] to argue that the continued existence of American military bases in Ryukyu/Okinawa may not be "incompatible with the respect of the fundamental human rights of the people of Ryukyu/Okinawa".[169] Moriteru Arasaki, a scholar who has extensively studied the modern history of Ryukyu/Okinawa, called this "structural discrimination".[170]

3. Self-identification

(a) *Contested identity*: Self-identification as a distinct people is the most fundamental criterion when assessing a population's recognition as "people". Nevertheless, this issue proves to be the greatest obstacle for Ryukyuans/Okinawans to claim this status because of a strong motivation among Ryukyuans/Okinawans to identify themselves as Japanese "in their desire to share the modernity and progress they identified with Japan".[171] This was observed in the *Jinruikan* incident and subsequent criticism by Ryukyuans/Okinawans. Identification as Japanese was a mainstream view during the post-war period under US military occupation, where the

[162] Arnaud NANTA, "Colonial Expositions and Ethnic Hierarchies in Modern Japan" in Pascal BLANCHARD, ed., *Human Zoos: Science and Spectacle in the Age of Colonial Empires* (Liverpool: Liverpool University Press, 2008), 248 at 250.

[163] *Ibid*. at 249.

[164] *Ibid*. at 251.

[165] *Ibid*. at 255.

[166] Christy, *supra* note 156 at 180.

[167] *Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination*, Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Addendum, Mission to Japan, prepared by Doudou DIÈNE, UN Doc. E/CN.4/2006/16/Add.2 (2006) at para. 69.

[168] *Ibid*. at paras. 51–2.

[169] *Ibid*. at para. 88.

[170] Moriteru ARASAKI, *Nihon Ni Totte Okinawa Toha Nanika* [translated by Ai Abe: "What Is Okinawa to Japan?"] (Tokyo: Iwanami Shoten, 2016) at 34–7.

[171] Richard SIDDLE (1998) as cited in Glen D. HOOK and Richard SIDDLE, "Introduction: Japan? Structure and Subjectivity in Okinawa" in Glen D. HOOK and Richard SIDDLE, eds., *Japan and Okinawa: Structure and Subjectivity* (London; New York: Routledge Curzon, 2003), 1 at 9.

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Government of the Ryukyu Islands repeatedly identified the population as Japanese in a series of resolutions. However, Siddle points out that identification as Japanese during US rule is relational: he argues that in facing "an unambiguously 'foreign' and unjust U.S. military rule, Okinawans perceived themselves as sharing a broadly common cultural and historical continuity with mainland Japan".[172] Also, their desire to enjoy human rights and democracy guaranteed by Japan's so-called "peace constitution" contributed to this identification.[173] Dietz also suggests that becoming Japanese "did not mean to be ethnically Japanese"[174] but, rather, "to become a Japanese *citizen*" whose rights are guaranteed under Japan's Constitution, and was based in a desire to end the American military occupation.[175]

In fact, when it became obvious that the reversion would not bring the closure of the US military bases, but would merely turn Ryukyu/Okinawa into "internal colonial basing",[176] their motivations to identify as "Japanese" were shaken. The *hinomaru* (flag of the rising sun), once a symbol of Okinawan aspirations to be Japanese and their resistance to and defiance of US rule,[177] came to symbolize "Japanese colonial domination and aggression",[178] as demonstrated in the incident of a Ryukyuan/Okinawan protester burning the *hinomaru* flag at the first national sports event held in Ryukyu/Okinawa.

The continuing presence of the US military bases has acted as a constant reminder of the region's history and continuing subordination by both the US and Japanese governments, "evoking an ethnic perspective" and "politicization of Okinawan identity".[179] Continued politicization of their ethnic identity provided Ryukyuans/Okinawans with a "broader basis to interpret and challenge" their political situation, based not on the rights conferred by Japanese citizenship, but on their collective identity as an ethnic minority, nation, people, or, sometimes, as an *indigenous* people, and the rights bestowed to these statuses.[180] Since the 1990s, Okinawan activists have joined Ainu activists in raising their voices to demand the recognition and the protection of rights as indigenous peoples in international places like the UN.[181]

(b) *The rise of Uchinanchu identity*: Coinciding with the politicization of Ryukyuan/Okinawan identity, there has been a growing movement within Ryukyu/Okinawa to embrace an identity as "*Uchinanch*". *Uchinanchu* is defined as people of Ryukyuan/Okinawan descent, while people from mainland Japan are referred to as *Yamatonchu*. It has not only been widely used by individuals on a daily basis, but is increasingly used by local administrative institutions and private companies. In 1990, the first *Sekaino Uchinanchu Taikai* (The Worldwide Uchinanchu Festival (WWUF)) was organized by the Okinawa Prefectural Government. Since then, the WWUF has been held every five years, aiming to build a worldwide network of emigrant descendants from Ryuyku/Okinawa and passing on the *Uchinanchu* identity

[172] Richard SIDDLE, "Return to Uchinā: The Politics of Identity in Contemporary Okinawa" in Hook and Siddle. *Ibid*. at 136.
[173] *Ibid*.
[174] Dietz, *supra* note 38 at 188.
[175] *Ibid*.
[176] *Ibid*. at 184.
[177] Siddle, *supra* note 172 at 136.
[178] *Ibid*.
[179] Dietz, *supra* note 38 at 195.
[180] *Ibid*.
[181] *Ibid*. at 196.

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to the next generation.[182] An increasing number of young Okinawa/Ryukyuan people actively participate at this festival, which attracts more than 7,000 international participants. One study showed that the participants from Ryukyu/Okinawa had a strong sense of identity as *Uchinanchu*.[183] According to a survey conducted by Ryukyu Shimpo in 2021, 74% of the population of Okinawa Prefecture reported feeling proud of being Okinawan.[184]

This growing self-identification as *Uchinanchu* and politicized Ryukyuan/Okinawan identity were dramatically united during the election of the prefectural governor in 2014. The main issue of the election was whether to accept the relocation of the Marine Corps Air Station Futenma from Ginowan, Okinawa to Nago, Okinawa, which effectively meant building another new US base by dumping landfill into Oura Bay, which is rich in marine biodiversity. Takeshi Onaga stood as a candidate, claiming that this plan should be rejected based on the will of Ryukyuans/Okinawans. He used the campaign slogan "Identity over Ideology", appealing to the unity of *Uchinanchu* regardless of political position, and repeatedly used *Uchina-guchi* (a term to indicate Ryukyuan/Okinawan language). He triumphed over the opposing candidate, who supported the Japanese Government's relocation plan. Through this election, the identity of *Uchinanchu* has gained even broader public recognition.

4. Peoplehood of Ryukyu/Okinawan peoples

Drawing on the distinctiveness in terms of language, culture, and history, and the experience of common suffering, as well as the growing collective self-identification as "*Uchinanch*"", it can be concluded that Ryukyuans/Okinawans can claim to be a distinct group/"people" under international human rights law. The analysis that they hold an "unexercised" RSD as a former non-self-governing people also lends support to the recognition of Ryukyuans/Okinawans' peoplehood.

Based on the understanding that Ryukyuans/Okinawans are regarded as a distinctive "people", they are eligible to claim the RSD under the Covenants. Ongoing heavy military burdens unilaterally imposed by the Governments of Japan and the US in the name of national security, despite the consistent refusal by Ryukyuans/Okinawans, constitutes alien subjugation as well as racial discrimination. It is incompatible with the obligation to respect their RSD under Article 1 of the Covenants. The condemnation of colonization and alien subjugation, which lies at the core of the RSD, also lends support to their claim of the RSD.

C. Claiming the RSD as Indigenous Peoples: Possibility and Obstacles

It must be noted that there is a strong possibility for Ryukyuans/Okinawans to claim their RSD as "indigenous people (or peoples)" under the UNDRIP. The criterion, formulated by José Martínez Cobo, in his report "Study of the Problem of Discrimination Against Indigenous Populations", provides an authoritative understanding of indigenous

[182] Takeshi ONAGA, "Dairokkai Sekai No Uchinanchu Taikai Kaikai Siki Aisatsu" [translated by Ai Abe: "Opening Address of the Sixth World Wide Uchinanchu Festival"] (27 October 2017), online: Okinawa Prefectural Archives <http://www.pref.okinawa.jp/site/chijiko/hisho/hpchijimessage/20161027utinanchu.html>.

[183] Junzo KATOH *et al*., "A Study on Okinawa Identity and Uchina Network among Okinawans: In Conjunction with Basic Analysis of the '6th Worldwide Uchinanchu Festival'" (2018) 14 Immigration Studies 1 at 13, online: University of the Ryukyus Repository <http://ir.lib.u-ryukyu.ac.jp/bitstream/20.500.12000/42346/1/No14p1.pdf>.

[184] "Kenmin dearukoto hokorini omou 74%" [Translated by Ai Abe: "Feel Proud of Being Okinawan: 74%"] *Ryukyu Shimpo* (8 January 2022), online: Ryukyu Shimpo <https://ryukyushimpo.jp/news/entry-1451275.html>.

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peoples[185] and, as Uemura suggests, the peoples of Ryukyu/Okinawa meet all the criteria for constituting an indigenous people. In fact, responding to the information provided by non-governmental organizations and civil society groups, the UN human rights bodies "have accepted Okinawan delegations as members of the indigenous peoples' community since 1996".[186]

However, there remains a strong hesitance among Ryukyuans/Okinawans to identify themselves as "indigenous peoples". For example, the City Council of Tomigusuku, Okinawa adopted an opinion statement in 2015 that stated that "most people of Okinawa do not consider themselves to be indigenous people"[187] and requested that the UN recommendations be retracted. As shown in the case of the *Jinruikan* incident, this attitude of differentiating themselves from indigenous peoples has deep roots. Even now, not only in Japan but also in Ryukyu/Okinawa, "the notion of 'economic backwardness' and 'primitiveness' continue to underpin the definition of indigenous peoples",[188] which is an obstacle for Ryukyuans/Okinawans to collectively self-identify as indigenous peoples. It is strongly recommended that self-identification as indigenous peoples be encouraged for Ryukyuans/Okinawans to avail themselves of the relevant provisions of the UNDRIP, which offers a stronger legal standing to claim the RSD.

III. Conclusion

The election of a new Okinawa prefectural governor was held on 30 September 2018, following the sudden death of former governor Takeshi Onaga. In practice, it was a choice between a candidate strongly supported by the Government of Japan and a candidate who claimed to inherit the will of Onaga. Denny Tamaki adopted Onaga's campaign slogan "Identity over Ideology" and even added a new slogan "*Uchina no koto ha Uchinanchu ga kimeru*",[189] meaning "let *Uchinanchu* decide about Ryukyuan/Okinawan matters". He won the election with the highest number of votes in Ryukyuan/Okinawan history. One can observe that the sense of collective identity and the will to obtain the means of self-governance are growing rapidly amid intensifying conflicts between Okinawa Prefecture and the Government of Japan.

As the conflicts intensify, the legitimacy of Ryukyu/Okinawan peoples' claim for the RSD, and indeed the theme of the oral statement made by former governor Onaga, deserves even more extensive examination. As this paper has discussed, the RSD is broader and has an internal dimension, which is recognized in several international instruments. It is widely accepted that the subject of the RSD has expanded from a narrow definition of colonial peoples, which is dependent on colonial boundaries, to a more diverse definition that includes indigenous peoples, a "portion of the population of an existing state",[190] and a distinct people who share a "common suffering".

[185] *Study of the Problem of Discrimination against Indigenous Populations*, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Volume V: Conclusions, Proposals and Recommendations, prepared by José R. MARTÍNEZ COBO, UN Doc. E/CN.4/Sub.2/1986/7/Add.4 (1987) at para. 379.

[186] Uemura, *supra* note 79 at 107.

[187] Opinion Statement of the City Council of Tomigusuku of Okinawa Prefecture, as cited in *Tenth and Eleventh Combined Periodic Report, supra* note 155 at para. 35.

[188] *Consultation on the Situation of Indigenous Peoples in Asia*, Report of the Special Rapporteur on the Rights of Indigenous Peoples, prepared by James ANAYA, UN Doc. A/HRC/24/41/Add.3 (2013) at para. 32.

[189] "Henoko Hantai Nezuyoku Okinawa Chijisen Yuruganu Minni Shimesu" [translated by Ai Abe: "Firm Objection to Henoko: Will of People Expressed in the Election"] *Ryukyu Shimpo* (1 October 2018), online: Ryukyu Shimpo <https://ryukyushimpo.jp/news/entry-811533.html>. Note that *Uchinanchu* is the term the people of Ryukyu/Okinawa use to refer to themselves.

[190] *Reference re Secession of Quebec*, supra note 54 at para. 124.

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Combining the argument that the Ryukyu/Okinawa people have an "unexercised" RSD as a former non-self-governing people in international law, together with the region's growing collective identity and stronger calls for self-governance, it can be concluded that Ryukyuans/Okinawans are eligible to claim an internal RSD under the Covenants. It is strongly recommended that Ryukyuans/Okinawans bring their voice to UN human rights bodies, such as the United Nations Human Rights Committee or UN treaty bodies, to gain international support.

For the Government of Japan, this claim raises the imminent and important question of how a democratic state should respond to a legitimate claim of the RSD of peoples within its territory. Similar questions have been raised in Canada, Spain, Scotland, and other nations. The position of international human rights law is clear; the Covenants, both of which were ratified in 1979 by the Government of Japan, place the duty to respect and promote the realization of the RSD of peoples. The Friendly Relations Declaration also stipulates that establishing political or territorial autonomy is one way to implement the RSD. The Government of Japan has taken the position that the Ryukyuans/Okinawans are Japanese nationals equally protected under the Constitution of Japan. However, as the RSD is not a right conferred by the Constitution of Japan, but by international human rights law, it entails obligations under international human rights law. In addition, simply being Japanese nationals does not deny the status of Ryukyuans/Okinawans as a distinctive people within Japan. The Government of Japan should respond to their cry for the RSD as a distinctive people sincerely and take concrete steps to respect and fulfil the RSD of Ryukyuans/Okinawans.

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